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11  
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION  
14

15 CYNTHIA BROOKS, an individual,

16 Plaintiff,

17 v.

18 U.S. BANK, N.A. and DOES 1 through 10  
19 inclusive,

20 Defendants.  
21

Case No. C12-4935

[PROPOSED] STIPULATED PROTECTIVE  
ORDER

Complaint Filed August 21, 2012

22  
23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve production of confidential,  
25 proprietary, or private information for which special protection from public disclosure and from use for any  
26 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to  
27 and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this  
28 Order does not confer blanket protections on all disclosures or responses to discovery and that the protection

1 it affords from public disclosure and use extends only to the limited information or items that are entitled to  
 2 confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in  
 3 Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
 4 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be  
 5 followed and the standards that will be applied when a party seeks permission from the court to file material  
 6 under seal.

## 7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
 9 items under this Order.

10 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,  
 11 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
 12 26(c); confidential or sensitive company proprietary business information; and information about current,  
 13 past or prospective employees that is of a confidential or private nature, wage information and job  
 14 performance documentation .

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their  
 16 support staff).

17 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY  
 18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

19 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
 20 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
 21 – ATTORNEYS' EYES ONLY".

22 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or  
 23 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,  
 24 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
 26 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant  
 27 in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time  
 28

of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:  
extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in

1 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after  
2 its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including  
3 becoming part of the public record through trial or otherwise; and (b) any information known to the  
4 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source  
5 who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.  
6 Any use of Protected Material at trial shall be governed by a separate agreement or order.

7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
9 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise  
10 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
11 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
12 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions  
13 or applications for extension of time pursuant to applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
16 Party that designates information or items for protection under this Order must take care to limit any such  
17 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to  
18 do so, the Designating Party must designate for protection only those parts of material, documents, items, or  
19 oral or written communications that qualify – so that other portions of the material, documents, items, or  
20 communications for which protection is not warranted are not swept unjustifiably within the ambit of this  
21 Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be  
23 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
24 retard the case development process or to impose unnecessary expenses and burdens on other parties)  
25 expose the Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it designated for  
27 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,  
28 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

1           5.2     Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
2 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery  
3 Material that qualifies for protection under this Order must be clearly so designated before the material is  
4 disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that  
9 contains protected material. If only a portion or portions of the material on a page qualifies for protection,  
10 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
11 in the margins) and must specify, for each portion, the level of protection being asserted.

12           A Party or Non-Party that makes original documents or materials available for inspection need not  
13 designate them for protection until after the inspecting Party has indicated which material it would like  
14 copied and produced. During the inspection and before the designation, all of the material made available  
15 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the  
16 inspecting Party has identified the documents it wants copied and produced, the Producing Party must  
17 determine which documents, or portions thereof, qualify for protection under this Order. Then, before  
18 producing the specified documents, the Producing Party must affix the appropriate legend  
19 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that  
20 contains Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
22 in the margins) and must specify, for each portion, the level of protection being asserted.

23           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
24 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all  
25 protected testimony and specify the level of protection being asserted. When it is impractical to identify  
26 separately each portion of testimony that is entitled to protection and it appears that substantial portions of  
27 the testimony may qualify for protection, the Designating Party may invoke on the record (before the  
28 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific

portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party



1 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
2 Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is  
6 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
7 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality  
8 designation by electing not to mount a challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
10 providing written notice of each designation it is challenging and describing the basis for each challenge. To  
11 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to  
12 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties  
13 shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in  
14 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of  
15 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
16 confidentiality designation was not proper and must give the Designating Party an opportunity to review the  
17 designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain  
18 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge  
19 process only if it has engaged in this meet and confer process first or establishes that the Designating Party  
20 is unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
22 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in  
23 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the parties  
24 agreeing that the meet and confer process will not resolve their dispute. Each such motion must be  
25 accompanied by a competent declaration affirming that the movant has complied with the meet and confer  
26 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion  
27 including the required declaration within 21 days shall automatically waive the confidentiality designation  
28 for each challenged designation. In addition, the Challenging Party may file a motion challenging a

1 confidentiality designation at any time if there is good cause for doing so, including a challenge to the  
 2 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
 3 must be accompanied by a competent declaration affirming that the movant has complied with the meet and  
 4 confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
 6 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
 7 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
 8 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
 9 confidentiality as described above, all parties shall continue to afford the material in question the level of  
 10 protection to which it is entitled under the Producing Party's designation until the court rules on the  
 11 challenge.

## 12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 14 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,  
 15 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of  
 16 persons and under the conditions described in this Order. When the litigation has been terminated, a  
 17 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure  
 19 manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the  
 21 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
 22 item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
 24 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
 25 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto  
 26 as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party  
 28 to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment



1 and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
3 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
4 Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
7 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
11 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
12 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court  
13 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

14 (g) the author or recipient of a document containing the information or a custodian or other  
15 person who otherwise possessed or knew the information.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
17 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
21 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
22 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
23 as Exhibit A;

24 (b) House Counsel of the Receiving Party (1) who has no involvement in competitive  
25 decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the  
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in  
27 paragraph 7.4(a)(1), below, have been followed];

28 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this

1 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as  
 2 to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
 5 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
 6 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

7 (f) the author or recipient of a document containing the information or a custodian or other  
 8 person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
 10 ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

11 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
 12 Party, a Party that seeks to disclose to House Counsel any information or item that has been designated  
 13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make  
 14 a written request to the Designating Party that (1) sets forth the full name of the House Counsel’s and the  
 15 city and state of his or her residence, and (2) describes the House Counsel’s current and reasonably  
 16 foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel  
 17 is involved, or may become involved, in any competitive decision-making.

18 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
 19 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
 20 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph  
 21 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of  
 22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks  
 23 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or  
 24 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current  
 25 employer(s), (5) identifies each person or entity from whom the Expert has received compensation or  
 26 funding for work in his or her areas of expertise or to whom the expert has provided professional services,  
 27  
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1 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by  
2 name and number of the case, filing date, and location of court) any litigation in connection with which the  
3 Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or  
4 trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified in the preceding  
6 respective paragraphs may disclose the subject Protected Material to the identified Designated House  
7 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection  
8 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the  
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within  
11 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to  
12 Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in  
13 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the  
14 court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
15 reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the  
16 risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce  
17 that risk. In addition, any such motion must be accompanied by a competent declaration describing the  
18 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
19 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the  
20 disclosure.

21 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert  
22 shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
23 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House  
24 Counsel or Expert.

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26  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should  
28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party  
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1                   1. promptly notify in writing the Requesting Party and the Non-Party that some or all  
2 of the information requested is subject to a confidentiality agreement with a Non-Party;

3                   2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
4 this litigation, the relevant discovery request(s), and a reasonably specific description of the information  
5 requested; and

6                   3. make the information requested available for inspection by the Non-Party.

7                   (c) If the Non-Party fails to object or seek a protective order from this court within 14  
8 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
9 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a  
10 protective order, the Receiving Party shall not produce any information in its possession or control that is  
11 subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a  
12 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
13 court of its Protected Material.

14       10.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15                   If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the  
17 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
18 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
19 the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)  
20 request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is  
21 attached hereto as Exhibit A.

22       11.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

23                   When a Producing Party gives notice to Receiving Parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving  
25 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The recipient of an inadvertent  
26 production may not "sequester" or in any way use the document(s) pending resolution of a  
27 challenge to the claim of privilege or other protection to the extent it would be otherwise allowed  
28

1 by Federal Rule of Civil Procedure 26(b)(5)(B) as amended in 2006. This includes a restriction  
2 against “presenting” the document(s) to the court to challenge the privilege claim as may otherwise  
3 be allowed under Rule 26(b)(5)(B) subject to ethical obligations. This provision is not intended to  
4 modify whatever procedure may be established in an e-discovery order that provides for production without  
5 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
6 agreement on the effect of disclosure of a communication or information covered by the attorney-client  
7 privilege or work product protection, the parties may incorporate their agreement in the stipulated protective  
8 order submitted to the court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
11 modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
13 Party waives any right it otherwise would have to object to disclosing or producing any information or item  
14 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to  
15 object on any ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and  
17 regulations relating to the export of technical data contained in such Protected Material, including the  
18 release of such technical data to foreign persons or nationals in the United States or elsewhere. The  
19 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving  
20 Party shall take measures necessary to ensure compliance.

21 12.4 Filing Protected Material. Without written permission from the Designating Party or a court  
22 order secured after appropriate notice to all interested persons, a Party may not file in the public record in  
23 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
24 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant  
25 to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
26 Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the  
27 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection  
28 under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local



Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 8, 2013 /s/ Eve Cervantez

Attorneys for Plaintiff

*Pursuant to N.D. Cal. L.R. 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from the above signatory.*

DATED: February 8, 2013 /s/ Emilie C. Woodhead

Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 13, 2013

The Honorable Edward M. Chen  
United States District Court

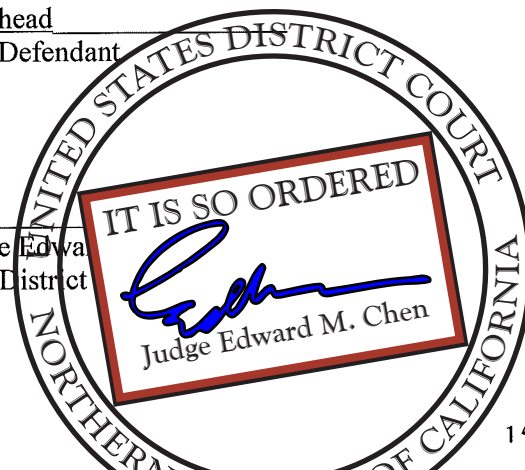


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ [date] in the case of *Brooks v. U.S. Bank, N.A.*, Case No. C12-4935 EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]